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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 115 63

THE NORTHWESTERN BANDS OF SHOSHONE INDIANS,

Petitioners,

vs.

THE UNITED STATES.

STATEMENT OF GROVER A. GILES, ATTORNEY GENERAL OF THE STATE OF UTAH, *Amicus Curiae*, IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

GROVER A. GILES,
Amicus Curiae.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 915

THE NORTHWESTERN BANDS OF SHOSHONE INDIANS,

Petitioners,

vs.

THE UNITED STATES.

STATEMENT OF GROVER A. GILES, ATTORNEY GENERAL OF THE STATE OF UTAH, *Amicus Curiae*, IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

On behalf of the State of Utah, in which many members of petitioner bands still reside, the undersigned respectfully suggests to the Court the propriety of granting the writ of certiorari in the above case; and as reasons therefor respectfully states:

When the white settlers first came to Utah to colonize, its northern area was occupied by the petitioner bands. Sovereignty over these lands was obtained by the United States from Mexico under the Treaty of Guadalupe Hidalgo.

By virtue of their immemorial possession they were possessed of Indian title to this land (*United States v. Sante Fe Pacific R. Co.*, 314 U. S. 339) often denominated by the whites as an "Indian claim." The development of the gold mines in northern Idaho and the migration to the Oregon country made it highly desirable from the standpoint of the whites that rights of way and other concessions across petitioners' land be obtained by treaty. Accordingly, on July 30, 1863, the United States entered into a treaty at Box Elder, Utah, with the petitioner Indians (13 Stat. 663), by which petitioners granted certain rights of way, etc., across their lands. The treaty was, of course, written by the treaty commissioners representing the United States; for none of the Indians who signed the same could either read or write. In the language of the frontier, the treaty described the land of petitioners as "the land claimed by Pokatello (a chief of petitioner Indians) for himself and his people." The treaty contained no cession of, or extinguishment of Indian title to, this land.

The petitioner Indians insist that by this "white man's treaty" by which they granted rights of way, etc., to the whites, they had the right to assume and understand that their Indian title was recognized and that they would not be driven from and deprived of their land without further treaty agreement. And although Congress by Act of February 23, 1865 (13 Stat. 432), authorized the President to enter into treaties with the Tribes of Indians in Utah Territory to extinguish their Indian title (R. 38-9), no subsequent treaty was ever made with petitioner Indians. Nevertheless, practically all of their land in Utah has been taken from them by the United States for grants to railroads, school sections,

homesteads for whites, etc. Petitioners have thus been forever deprived of their homeland and have never received one cent by way of compensation therefor. Yet, not until Congress granted them a jurisdictional Act in 1929 (45 Stat. 1407), were they given even a right to sue.

By the decision of the court below, petitioner Indians have been told that the Box Elder treaty of 1865 did not recognize their Indian title and that the United States consequently has to pay nothing for their land. There is serious doubt as to the soundness of that decision. Obviously, petitioners ought to be treated as well as other components of the Shoshone Nation (for decision in the case of the Eastern Band of Shoshones, see *Shoshone Tribe of Indians v. United States*, 299 U. S. 476, 304 U. S. 111), and, as a matter of law, equally with the Indians of other states (Montana, North and South Dakota, Wyoming and Nebraska) as ruled by the Court of Claims in *Fort Berthold Indians v. United States*, 71 C. Cls. 308, and like cases.

Also, the view of the court below that, with respect to land obtained from Mexico, the United States recognized no possessory right of Indians but "regarded itself as the absolute and unqualified owner" of the land, and "under no obligation to treat with the Indians occupying the same for the extinguishment of their title" (R. 71) is at variance with the consistent view of this Court that the Indian "right of occupancy is considered as sacred as the fee simple of the whites" (See *United States v. Santa Fe Pac. R Co.* 314 U. S. 339, 345).

The age-old grievances asserted by these Indians, who

constitute a self-respecting segment of the population of Utah, deserve definitive ruling by the highest court of the land in the interest of fairness to this people.

Respectfully submitted,

GROVER A GILES,
Attorney General of the State of Utah,
Amicus Curiae.